IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

A.O. No. 285 of 2006
with
C.A.No 378 of 2006

Nizamuddin Ansari and ors ..appellants
vs
Executive Engineer MMRDA & anr.. respondents

Mr A.S.Uraizee with Ms Shafaq Uraizee
and Madnesh V Singh for appellants

Mr R.M.Sawant for respondent no.l

Mr. A.R.Shaikh for respondent no. 2

CORAM; A.M.KHANWILKAR J.

DATED 5.5.2006

P.C.

l. Heard learned counsel for the parties. Perused relevant documents appended to the appeal memo as well as proceedings between the parties tendered across the Bar. I find no substance in this appeal. The trial court has rightly refused to grant ad-interim relief in the fact situation of the present case. It is seen that the appellants had filed a suit before the City Civil Court Bombay being S.C.Suit No.3l73 of 2004. The grievance now made in the present appeal was specifically put in issue in the said suit, which can be discerned from

the interim protection claimed in the said suit by the appellants in the notice of motion no.3049 of 2004. However, that suit came to be withdrawn. The present suit being Suit No. l040 of 2006 proceeds to seek a direction against the defendant no.l to restore the demolished structure of the plaintiff no.l i.e. allotted no 320 of Annex B admeasuring area 209 sq ft situated at Teligulli Slum area, Sai Wadi, Andheri East, Mumbai and for a further declaration that the defendant no.l acted without jurisdiction; and also challenge the notice issued by the defendant no.l addressed to the plaintiff nos 2 to 6 dated 8.2.2006.

2. The substance of the argument before this court is that the location of the suit structure mentioned in the notice is incorrect. The fact as emerges from the record available before the court,however, clearly indicates that the suit structure is on the set back area of the newly constructed building to rehabilitate slum dwellers.

3. Besides, the new building to rehabilitate the slum dwellers covered under the scheme (appellants are also part of the scheme), is ready and possession has been offered to the respective

members,which step is being undertaken under the supervision of the Slum Rehabilitation Authority. The grievance of the appellants that premises allotted to them in the newly constructed building is not at the same location cannot be countenanced. The new building has been constructed to rehabilitate the slum dwellers. The slum dwellers, who are protected and entitled to alternate accommodation, will be accommodated in the said newly constructed building to rehabilitate them. The appellants, therefore cannot insist for allocation of premises in the building which is still under construction, which is independent and which is facing road. In the circumstances, the grievance of the appellants that their location will be changed, for which reason they cannot be ousted from the suit structure is without any substance. Moreover, the very basic issue that the suit structures are standing on the set back area and cannot be tolerated is overlooked. The action of the authority to remove the suit structures, therefore, cannot be interfered with. The trial court has rightly refused to grant ad-interim relief as prayed for by the appellants.

4. The trial court has also rightly adverted to

the fact that the appellants are not entitled for any discretionary and equitable reliefs from the court having approached the court with unclean hands. As mentioned earlier, the main grievance about the dislocation of the appellants from the present suit structures which are facing road, was put in issue in the present suit filed by the appellants on the earlier occasion, which was withdrawn. Thus understood, this appeal is devoid of any merit and same is dismissed. Civil Application disposed of.

5. At this stage, counsel for the appellants submits that the appellants be protected for a period of two weeks to enable them to approach the Apex Court. By way of indulgence two weeks time as prayed for is granted. It is made clear that if no steps are taken by the appellants within two weeks to move the Apex Court, it would be open to the respondents to proceed in respect of the suit structures in accordance with law. No further time will be granted for the simple reason that the suit structures are falling within the road (set back area).